

SERIAL NO.: 09/826,765

**REMARKS**

The Final Office Action mailed January 12, 2004 has been received and reviewed. Claims 1-5 and 8-11 are pending and stand rejected over newly cited references. Claims 1, 8, 10 and 11 are amended. Claims 2-7, 9, 12 and 13 are cancelled. The Applicant submits that the claim amendments are responsive to the new rejection and were not made earlier for that reason. The Applicant requests entry of the amendments to place the application in condition for allowance for the reasons stated below.

**Rejection Of Claims 1-5 And 8-11 Under 35 U.S.C. § 112, First Paragraph**

The extant claims are rejected under the first paragraph of § 112 as containing subject matter not described in the specification, namely "in a manner to assure orientation of a bottle in a vertical position when secured by said self-adjusting bottleneck-engaging ring member." The rejection is overcome by amendment of claims 1 and 8 to clarify that the invention is structured to maintain the bottle in a vertically upright position or orientation. Support for the amendment is found in FIG. 2 and throughout the specification.

**Rejection Of Claims 1-5 And 8-11 Under 35 U.S.C. § 112, Second Paragraph**

The extant claims are rejected under the second paragraph of § 112 as being indefinite for containing the phrase "a vertical position" in claims 1 and 8. The rejection is overcome by amendment of claims 1 and 8 as noted above.

SERIAL NO.: 09/826,765

Rejection Of Claims 1-5 and 8-11 Under 35 U.S.C. § 103

Claims 1-5 and 8-11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Becker (6,131,780) in view of Palmer, et al (GB 2233238). The Examiner states that Becker discloses in FIGS. 1 and 7 a bottle carrier device having a hook with pivoted arm and bottle-neck-engaging ring member, but that Becker fails to disclose the engaging member being a self-adjusting elastomeric ring which, the Examiner states, is disclosed by Palmer. The Examiner contends that it would have been obvious to combine Palmer with Becker to obviate that which is claimed. The rejection is overcome in part by amendment of the claims and is also traversed.

Claims 1 and 8 require the present invention to be structured with an elastomeric bottleneck-engaging ring that, in tandem with the carabiner and joining member, keeps the bottle in a vertically-upright position or orientation. As argued previously, Palmer discloses a device having two rubber bands connected together and spaced from each other by a rigid strip which places the center of gravity of the Palmer device at the center of the bottle. As a result, the elastomeric bands of Palmer are neither structured nor intended to maintain the bottle in a vertically upright position as claimed. Moreover, the elastomeric bands of Palmer are not sized to be positioned about the neck of a bottle as claimed. Therefore, substituting the elastomeric bands and rigid strip of Palmer with Beck will not provide a structure as claimed, namely having an elastomeric ring having a low modulus of elasticity and sized to be received about the neck of a bottle, and being structured to assure orientation of the bottle in a vertically upright position. Therefore, claims 1 and 8 are not obviated by Becker or Palmer, alone or in

SERIAL NO.: 09/826,765

combination.

Rejection Of Claims 1-5 and 8-11 Under 35 U.S.C. § 103

Claims 1-5 and 8-11 are newly rejected under 35 U.S.C. § 103 as being unpatentable over Becker (6,131,780) in view of Japanese reference JP 2000-238783 (the "JP reference"). The Examiner states that Becker discloses in FIGS. 1 and 7 a bottle carrier device as claimed, but that Becker does not disclose the engaging ring member being a self-adjusting elastomeric ring, which the Examiner states is disclosed by the JP reference, thereby rendering obvious the present invention. The amendment is overcome by clarifying amendment of claims 1 and 8. As amended, the claims require a bottle carrier device comprising a carabiner particularly structured for quick and single-handed release of the carabiner from a support, and require a joining member sized and particularly attached to the carabiner and elastomer ring in close proximity to each other and in a manner to provide vertically-upright orientation of a bottle carried by the claimed device. Becker is specifically structured with a hook member and joining member that do not facilitate single-handed detachment of the hook from a support. Additionally, Becker discloses a device having an adjustably, non-elastomeric bottle-engaging member that is particularly sized to accommodate varying sizes of bottles, while the JP reference does not teach an elastomeric ring that is structured to accommodate bottle necks of varying size and diameter. Therefore, there is no motivation in Becker to substitute the bottleneck-engaging member of Becker with the elastomeric ring of the JP reference. Therefore, the present claims are

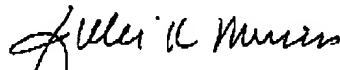
SERIAL NO.: 09/826,765

not obviated by either Becker or the JP reference, alone or in combination.

**CONCLUSION**

The Applicant submits that claims 1, 8, 10 and 11 present patentable subject matter for the reasons stated above. Reconsideration and allowance are respectfully requested. If additional issues remain unresolved, the Applicant requests that the Examiner contact the undersigned to resolve them.

Respectfully submitted,



Julie K. Morriss  
Attorney for Applicant  
Registration No. 33,263  
MORRISS O'BRYANT COMPAGNI, P.C.  
136 South Main Street, Suite 700  
Salt Lake City, Utah 84101  
(801) 478-0071 telephone  
(801) 478-0076 facsimile

Date: March 10, 2004